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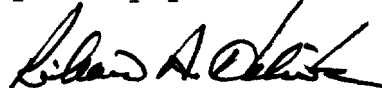
June 3, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Mr. Caton

Submitted herewith on behalf of Jimmie H. Horne, Jr. are an original and four copies of a Petition for Rule Making to amend the Table of Allotment for FM Broadcast Stations, Section 73.202(b) of the Commission's Rules, by allocating Channel 288A to Malabar, Florida. Any questions pertaining to this matter should be addressed to undersigned counsel.

Very truly yours



Richard A. Helmick

Enclosure

cc w/encl.: Irving Gastfreund, Esq.
John M. Spencer, Esq.
Allan G. Moskowitz, Esq.

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BEFORE THE

Federal Communications Commission

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Malabar, Florida)

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RECEIVED

JUN - 3 1994

To: Chief, Allocations Branch,
Policy and Rules Division,
Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PETITION FOR RULE MAKING

Jimmie H. Horne, Jr. ("Petitioner"), by his attorneys and pursuant to Sections 1.401, 1.419 and 1.420 of the Commission's Rules, hereby requests that the Table of Allotments for FM Broadcast Stations, Section 73.202(b) of the Commission's Rules, be amended as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Malabar, Florida	--	288A
Sebring, Florida	288A	289C3
Avon Park, Florida	292A	256A
New Port Richey, Florida	288A	288C1

In support thereof, the following is set forth.

1. Malabar is located in East Central Florida in Brevard County. The 1990 population was 1,977, which reflects a 57% increase over the 1980 population of 1,118. Malabar, which is governed by a city council, was incorporated in 1962; the city

limits encompass an area of 11 square miles. Malabar's total assessed property value in fiscal year 1990 was \$119,306,455.^{1/}

2. The proposed allocation, which would provide Malabar with its first local transmission service, is subject to the substitution of: Channel 289C3 (or 289A) for Channel 288A at Sebring, Florida, as proposed in MM Docket 93-65; Channel 256A for 292A at Avon Park, Florida, as proposed in MM Docket Nos. 92-195 and 93-65; and Channel 288C1 (or 288C2 or 288C3) for Channel 288A at New Port Richey, Florida, as proposed in MM Docket No. 93-65. Roper Broadcasting, Inc., licensee of Station WCAC(FM), Sebring, Florida, by comments filed in MM Docket No. 93-65, supports the proposed change in the WCAC frequency from Channel 288A to 289C3. The substitution of Channel 256A for Channel 292A at Avon Park, Florida is supported by Highlands Media Company, licensee of WWOJ(FM), Avon Park, Florida, by comments filed in both MM Docket No. 93-65 and MM Docket No. 87-455. And the substitution of Channel 288C1 (or Channels 288C2 or 288C3) for Channel 288A at New Port Richey, Florida is supported by WGUL-FM, Inc., licensee of Station WGUL-FM, New Port Richey, Florida, by comments filed in MM Docket No. 93-65. There are no oppositions and/or conflicting counterproposals to the proposed channel substitutions in the above-mentioned rule making proceedings; accordingly, subject to the above-mentioned channel substitutions, the allocation of

^{1/} Florida Municipal Profiles, Information Publications, Palo Alto, California.

Channel 288A to Malabar, Florida is fully consistent with the Commission's technical requirements as demonstrated in the attached technical statement of W. Lee Simmons.

3. Petitioner takes no position on the merits of the channel allocation proposals in MM Docket Nos. 87-455, 92-195 and 93-65 nor does it regard the instant proposal to constitute an untimely counterproposal in those proceedings. Unfortunately, the Commission's proposal to substitute Channel 256A for Channel 292A at Avon, Florida, which would make possible the substitution of both Channel 289C3 (or 289A) for Channel 288A at Sebring, Florida and Channel 288C1 (or 288C2 or 288C3) at New Port Richey, Florida has not yet been implemented, but would appear to be imminent. Petitioner, however, does not have the option of delaying the instant Petition for Rule Making until such time as the Commission has formally concluded the protracted proceedings of Docket 87-455 and the related proceedings in Dockets 92-195 and 93-65.

4. Channel 288A is the only possible channel allocation that can be made to Malabar to provide that city with its first local transmission service; however, the possibility of even this simple channel allocation is in jeopardy. Because of a settlement of the Channel 288A Jupiter, Florida FM comparative proceeding (MM Docket 91-85), which was terminated by Order dated April 22, 1994 (public notice of which was given on April 29, 1994), the prospective issuance of a construction permit to Jupiter Radio Partners is imminent; the issuance of that construction permit will trigger the

anticipated filing of an application to upgrade the Jupiter allocation from 288A to 288C3, in which event the Channel 288A allocation at Malabar would be precluded. Accordingly, Petitioner has no other alternative but to file this Petition for Rule Making at this time.

5. Petitioner respectfully submits that in light of the expressed support and intent in MM Docket Nos. 87-455, 92-195 and/or 93-65 of (a) Highlands Media Company, Inc., licensee of WWOJ(FM), Avon Park, Florida, to substitute Channel 256A for Channel 292A at Avon Park, Florida, (b) Roper Broadcasting, Inc., licensee of Station WCAC(FM), Sebring, Florida, to substitute 289C3 (or 289A) for Channel 288A at Sebring, Florida and (c) WGUL-FM, Inc., licensee of Station WGUL-FM, New Port Richey, Florida, to substitute 288C1 (or 288C2 or 288C3) for Channel 288A at New Port Richey, Florida, it is manifest that Petitioner is not required to propose to reimburse those licensees for reasonable costs incurred in connection with such channel changes and no such representation of reimbursement is being made by Petitioner.

6. Should the Commission modify the Table of FM Allotments to allocate Channel 288A at Malabar, Florida, Petitioner intends to expeditiously file an application for a construction permit for that frequency and, if such application is granted, Petitioner will expeditiously construct and place into operation the requisite station facilities.

7. The continued pending status of the above-referenced rule making proceedings, which would procedurally impact upon this Petition, have been pending at the Commission for extended periods of time; indeed, had these petitions been processed and granted within a reasonable time period, Petitioner would not now be confronted with a "Catch 22" situation -- caused solely by the Commission's inaction. The Commission's inaction is further exacerbated by the fact that there are no oppositions or conflicting counterproposals to these long pending rule making proceedings.

8. Underlying any Commission policy is the public interest. Failure to consider this Petition would deprive Malabar of its first local service; moreover, denial/dismissal of this Petition would demonstrate a Commission calculated to deprive a deserving community from any possibility of obtaining a first local transmission service. Public interest considerations should prevail over Commission internal procedures -- especially where Commission inaction is clearly manifested.

9. In sum, the public interest, convenience and necessity and the goals of Section 307(b) of the Communications Act would best be served by the allocation of Channel 288A at Malabar for that community's first local transmission service together with the related channel substitution/facility upgrades to allow Stations WCAC, WWOJ and WGUL-FM to provide a wider area service. In light of the foregoing, Petitioner respectfully requests that the

Commission amend its Table of FM Allotments, Section 73.202(b) of the Commission's Rules, so as to effectuate the channel allocation proposal set forth herein.

Respectfully submitted

JIMMIE H. HORNE, JR.

By: 

Robert B. Jacobi
Richard A. Helmick

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Its Attorneys

June 3, 1994

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**Technical Statement
In Support of a Proposal To Amend The
FM Table of Allotments, Section 73.202(b)
For Mr. Jimmie H. Horne
Malabar, Florida**

This engineering statement is in support of a proposed Amendment of the FM Table of Allotments for the town of Malabar, Florida.

This proposal is mutually exclusive with several different allocation proposals under consideration by the Commissions at this time.

The Commission has before it Docket 93-65 which proposes to change the table of allotments to allow WGUL-FM New Port Richey, Florida to move from Channel 288A to Channel 288C3. To accomplish this the Commission could complete the final phase of docket 87-455 which proposes to allow Highlands Media Company, License of WWOJ-FM, Avon Park, Florida to substitute channel 256A for its presently allocated channel of 292A. This would allow WGUL-FM (Docket 93-65) to be upgraded to Channel 288C3. Also under consideration in RM 8273 as a part of Docket 93-65 is WCAC in Sebring, Florida to move from Channel 288A to Channel 289C3 with a site restriction of 17 km south of Sebring. Under this proposal this petitioner's proposed allocation can be made.

Malabar, Florida
June, 1994

This proposal warrants consideration by the Commission as it would provide the first local service to Malabar, Florida. Also, a full search of the present table of allotments shows that this is the only channel available to Malabar, Florida.

It has been shown that Channel 288A can be allocated to Malabar with a site restriction of 11.1 km south south east of Malabar. The coordinates of the site are:

Lat: 27° 55' 30"

Lon: 80° 29' 40"

The Commissions recent settlement of the Jupiter, Florida Channel 288A application allows this allocation to be made. Accordingly, petitioner request that the Commission amend Section 73.202(b), The table of FM Allotments to read as follows:

City	Channel No.	
	Present	Proposed
Avon Park, Florida	292A	256A
New Port Richey, Florida	288A	288C1(or 288C2 or C3)
Sebring, Florida	288A	289C3(or 289A)
Malabar, Florida	---	288A

This proposal would allow three up-grades and a new

Malabar, Florida
June, 1994

First Service at Malabar, Florida while accommodating all
other proposals.

A handwritten signature in cursive script, reading "W. Lee Simmons". The signature is written in dark ink on a white background.

W. Lee Simmons

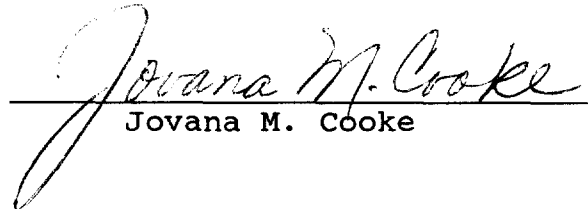
CERTIFICATE OF SERVICE

I, Jovana M. Cooke, a secretary in the law firm of Cohn and Marks, hereby certify that I have this 3rd day of June 1994, sent by first class mail, postage prepaid, a copy of the foregoing **PETITION FOR RULE MAKING** to the following:

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Jovana M. Cooke